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where it provided that until default the mortgagor should be permitted to sell, lease, and use the mortgaged franchises and property, provided that, in the event of a sale, the proceeds, other than the rents, issues, and profits, should be reinvested in other property, which should immediately become subject to the conditions of the deed of trusts.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 597, 598.]

2. Fraudulent Conveyances (§ 208*)—Creditors Entitled to Attack—Subsequent Creditors.—Code 1904, § 2458, makes every gift or conveyance with intent to hinder or defraud creditors void as to such creditors. Section 2459 provides that every gift or conveyance, which is not upon a consideration deemed valuable in law, or which is upon the consideration of marriage, shall be void as to creditors whose debts shall have been contracted at the time it was made, but not as to creditors whose debts shall have been contracted after it was made. Held, that while conveyances, void only because voluntary or in consideration of marriage, may be attacked only by existing creditors, conveyances, void under § 2458, because fraudulent, may be impeached by either prior or subsequent creditors.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 617, cited by the Court.]

Appeal from Circuit Court of City of Roanoke.

Suit by the Germania Bank and others against the Consolidated Tramway Company, Incorporated, and others. From a decree in favor of plaintiffs, defendants appeal. Affirmed.

Jackson & Henson, Woods, Chitwood & Cox, and Caldwell & Chaney, all of Roanoke, for appellants.

Hart & Hart and *Horace M. Fox*, both of Roanoke, for appellees.

LOUISVILLE & N. R. CO. *v.* RIELEY.

Sept. 20, 1917.

[93 S. E. 574.]

1. Carriers (§ 253 (1)*)—Carriage of Passengers—Tickets—Function.—While a ticket may, particularly in the case of mileage books, etc., evidence a contract between the carrier and passenger, it is ordinarily and in case of an action for ejection of a passenger by the conductor of the carrier to be considered only as evidence of the passenger's right to transportation.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 696.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Carriers (§ 254 (2)*)—Carriage of Passengers—Regulation.—A provision in a ticket, considered in its primary sense as evidence of the passenger's right to transportation that it should be good only on the day of sale, is, being a reasonable regulation of the carrier, valid, in the absence of governmental regulation or statute to the contrary.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 696, 699.]

3. Carriers (§ 253 (1)*)—Carriage of Passengers—Tickets.—Custom and usage have an important bearing on the question whether a ticket is some evidence of the passenger's right to ride or constitutes a contract between the parties.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 696.]

4. Carriers (§ 405 (3)*)—Carriage of Passengers—Baggage—Liability—Stipulations.—As a carrier is at common law liable as an insurer for baggage, it cannot by notice or ex parte regulation set forth in a ticket limit such liability where passenger did not assent.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 712.]

5. Appeal and Error (§ 1175 (3)*)—Determination.—Where a new trial could avail plaintiff nothing and judgment should, in the first instance, have been rendered for defendant, the court on appeal from a judgment for plaintiff will reverse the case without remand, rendering judgment for defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 628, 632.]

Error to Circuit Court, Wise County.

Action by V. R. Rieley against the Louisville & Nashville Railroad Company. There was a judgment for plaintiff, and defendant brings error. Reversed.

Irvine & Stuart, of Big Stone Gap, for plaintiff in error.

C. R. McCorkle, of Wise, for defendant in error.

LYNCHBURG FOUNDRY CO. *v.* DALTON.

Sept. 20, 1917.

[93 S. E. 587.]

1. Appeal and Error (§ 522 (2)*)—Record—Demurrer to Evidence.—A demurrer to the evidence is as much a part of the record as any other pleading, and failure to certify it according to Act March 21, 1916 (Acts 1916, c. 406), abolishing bills of exception, does not prevent its consideration on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 509; 4 Va.-W. Va. Enc. Dig. 545.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.